

PLAINTIFFS' EXHIBIT 7 TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(WORCESTER DIVISION)

G, a 12-year-old minor suing by a :
fictitious name for privacy reasons, :
MOTHER and FATHER, suing under :
fictitious names to protect the :
identity and privacy of G, their :
minor child, :
Plaintiffs :
vs. :Case No.15-cv-40116-TSH
THE FAY SCHOOL (by and through its :
Board of Trustees) and ROBERT :
GUSTAVSON, :
Defendants. :

DEPOSITION OF JEANNE T. HUBBUCH, M.D.

Thursday, May 26, 2016

10:00 A.M.

SCHWARTZ HANNUM PC

11 Chestnut Street

Andover, Massachusetts 01810

- - -

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May 26, 2016

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1 A I believe that she got it from Dr. Bill Rea at the
2 Environmental Health Center in Dallas.

3 **Q And have you worked with Dr. Bill Rea before?**

4 A I know Dr. Bill Rea from my association with the
5 American Academy of Environmental Medicine. He teaches
6 there regularly.

7 **Q And what does he teach there?**

8 A He really teaches about chemical sensitivity and
9 he's also quite knowledgeable about EHS.

10 **Q Do you know if your first interaction with [REDACTED]**
11 **was via telephone call?**

12 A I believe it was via e-mail.

13 **Q Did she reach out to you via e-mail?**

14 A She was -- yes, she was wondering if an
15 appointment would be appropriate.

16 MS. McKEAN: Can I have this marked, please.

17 (Defendant's Exhibit 214 marked)

18 **Q I've handed you what's been marked Exhibit 214, do**
19 **you see it's an e-mail -- or an e-mail chain between you and**
20 **[REDACTED] in June of 2014?**

21 A Correct.

22 **Q The bottom e-mail is an e-mail dated June 24, 2014**
23 **from [REDACTED] to you, correct?**

24 A Yes.

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1 Q Is this the first interaction that you had with
2 [REDACTED]?

3 A It's the first that I recall.

4 Q Now, in this e-mail, [REDACTED] is relaying to you some
5 symptoms that she indicates her 11 year old has been having,
6 correct?

7 A Correct.

8 Q And those symptoms include headache, dizziness,
9 ringing ears, chest pressure and nausea; is that correct?

10 A Correct.

11 Q And she says here, "I have connected this to the
12 blanket WiFi in school." Do you see that?

13 A Correct.

14 Q So is it fair to say that [REDACTED] had already
15 decided what the cause of her son's symptoms were by the
16 time she came and visited you?

17 MR. MARKHAM: Objection, speculation.

18 A Well, you will notice in the second paragraph, she
19 also says, I want to rule out other causes and for you to
20 tell me I'm crazy, so she definitely suspected it and she
21 wanted to know if this made sense or not.

22 Q But she also says in that same paragraph that you
23 just noted, "What is your protocol for diagnosing children
24 with EHS." Do you see that?

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1 A I do.

2 Q Did you get the impression that she wanted you to
3 diagnose her child with EHS?

4 A I think my impression was she wanted to know
5 whether this was a reasonable diagnosis or not.

6 Q And had she come up with the idea of this
7 diagnosis herself before coming to see you?

8 MR. MARKHAM: Objection, speculation. You
9 can answer if you can.

10 A Well, she says here she's connected it, so she's
11 clearly thinking about it.

12 Q Okay. Now, she says here at the end of the
13 e-mail, "It would be helpful if we can prearrange a time he
14 will not be in earshot to discuss how to proceed." Do you
15 see that?

16 A Yes.

17 Q Okay. Did you take the "he" to mean [REDACTED]?

18 A Yes.

19 Q Is it fair to say that [REDACTED] wanted to talk
20 to you without her son present?

21 A Yes.

22 Q Is that unusual when diagnosing a patient to not
23 see the patient?

24 A It's not unusual in cases with children,

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1 particularly if there are either emotional things that the
2 parent wants to talk about that are happening with the child
3 that they don't want to speak about in front of the child,
4 or behaviors, or in this case, my understanding was [REDACTED]
5 was being very careful not to tell [REDACTED] that she thought
6 that was the problem. She didn't want to prejudice him and
7 make him think that he was sensitive to WiFi, so she never
8 said it to him. So, he knew nothing about it.

9 Q Okay. And that's what [REDACTED] told you,
10 correct?

11 A Correct.

12 MS. McKEAN: Can I have this marked, please.

13 (Defendant's Exhibit 215 marked)

14 Q I've handed you what's been marked Exhibit 215, do
15 you see on the top of the document is an e-mail from you to
16 [REDACTED], July 3, 2014?

17 A Correct.

18 Q Does this appear to be your response to [REDACTED]
19 [REDACTED]' inquiry that we were just looking at at Exhibit 214?

20 A Yes.

21 Q And in the e-mail, you indicate, "It is first of
22 all a diagnosis of exclusion." Correct?

23 A Correct.

24 Q Okay. And the "it," is that EHS?

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1 A Yes.

2 Q You then say, "Something at school is bothering
3 him since he is fine away from there. Generally, the
4 symptoms should appear every time he is exposed." Do you
5 see that?

6 A Yes.

7 Q Did I read that correctly?

8 A Correct.

9 Q So when you first responded to [REDACTED], you
10 told her that if [REDACTED] was suffering from EHS, then his
11 symptoms should appear every time he's exposed; is that
12 correct?

13 A That's what I said there. What this was was a
14 general statement about it. I knew nothing about [REDACTED] at
15 this point. I had never -- she had not presented anything
16 other than what we saw in the e-mail. So, there's also a
17 principle that happens in both EHS and in chemical
18 sensitivity where over time, you're exposed to low levels
19 and you may have minimal symptoms, and then at some point
20 you reach a threshold, and after that threshold, then the
21 symptoms become much more consistent and regular and every
22 time. So, I was assuming that he was already in that stage
23 where he was having consistent regular symptoms, and I think
24 at the time of this, in retrospect, he was at the low level

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1 exposure where he had symptoms sometimes, and other times he
2 didn't, but that's a process and I didn't know anything
3 about him, I was just giving her a general idea of how you
4 go about looking at this.

5 Q So your long explanation there, you didn't put
6 that in this e-mail, correct?

7 A No, I didn't.

8 Q You simply just said that the symptoms should
9 appear every time he's exposed, correct?

10 A Right.

11 Q And we know that's not the case with [REDACTED],
12 correct?

13 MR. MARKHAM: Objection. You can answer.

14 A It was not the case early on. It became much more
15 consistently the case later in the course of events with
16 him. So not in 2014, but by the time he was in 2015, he was
17 having trouble.

18 Q So is it your understanding that there came a
19 point in time where [REDACTED] was having symptoms every
20 time he was exposed to WiFi?

21 A Pretty much, yes, very consistently.

22 Q And do you know when that happened?

23 A That happened sometime in the course of 2015.

24 Q Now, you saw him for the second visit you talked

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1 A Yes.

2 Q And then I see some Call Documentation notes from
3 both May 20 and May 22, 2014. Do you see that?

4 A Yes.

5 Q Have you seen this document before?

6 A I don't think so.

7 Q Okay. Other than the medical records that we just
8 went through, do you know of any other medical records that
9 you looked at prior to rendering your opinion contained in
10 Exhibit 98?

11 A No.

12 Q Can you tell me how you reached your opinion that
13 [REDACTED] is being adversely affected by prolonged exposure to
14 WiFi at school?

15 A It's the pattern of the symptoms that were
16 developing from 2012 on, that at first it was only a few
17 times that he didn't feel well and symptoms immediately
18 resolved when he was out of school. Over time, his symptoms
19 were more consistently happening in school. They were not
20 happening other places. They did not happen during the
21 summer, and except for that one other exposure that was at
22 the hotel, he wasn't aware of symptoms being caused by being
23 around WiFi. The other pieces that went into it, I
24 understood that he had allergies, but his allergies would

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1 not cause symptoms only at schools and only certain times,
2 his allergies would be much more seasonally affected, and
3 that wasn't the case. He has a tree allergy, but this had
4 nothing to do with the time of the year, and he would have
5 the same allergies at home as he would have at school, so
6 that wouldn't be affected that way. So, the pattern being
7 only at school, you had to figure out something that he was
8 being exposed to at school that was very different than what
9 he was being exposed to consistently anywhere else. Other
10 possibilities at school would be things like chemicals.
11 Sometimes, kids have had reactions to cleaning chemicals
12 that might be used in schools, or whiteboards, or
13 chalkboards, or other kinds of things. He had no history of
14 being sensitive to chemical odors, cleaning chemicals. When
15 I asked [REDACTED] about that, none of those things had ever
16 bothered him. So, they hadn't had to take all of that kind
17 of thing out of the home. As far as I know, he had no real
18 sensitivity to smell or odor, so that ruled out the chemical
19 part. Heavy metals wouldn't cause problems only at school
20 and not at home if he had a toxicity from some exposure like
21 that, it should affect him all the time, so at home and at
22 school, no matter where he was, it should affect him in the
23 summer. His pattern didn't fit that. So for me, it's
24 really the symptom pattern and the fact that he had a normal

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1 exam by his Pediatrician, he was being treated for
2 allergies, that had been going on for years, so that was not
3 the cause of his current change in symptoms.

4 Q Now, we justed look through all the medical
5 records, there's no indication in any of those records that
6 [REDACTED] had a pattern of symptoms, correct?

7 A They weren't looking at that.

8 Q Okay. So you did not obtain any information
9 regarding [REDACTED]'s medical condition that helped you --
10 strike that. Is it fair to say that you did not obtain
11 information from [REDACTED]'s medical records that indicated he
12 was sensitive to WiFi in rendering your opinion in the
13 letter in Exhibit 98 that [REDACTED] was being adversely
14 affected by WiFi?

15 A There was nothing in any of the records that
16 indicated that WiFi was the cause. What was helpful for me
17 on the Pediatrician's part was that his exam was normal, he
18 didn't -- there was no other causes found for headaches.

19 Q Now, the Pediatrician's record was simply his
20 annual physical, correct?

21 A Yes.

22 Q And that's the one you mentioned that there was no
23 other cause for headaches, correct?

24 A Right.

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1 A Yes.

2 Q Now, can you turn for me to the bottom of the
3 second page of Exhibit 230, please?

4 A Yes.

5 Q Can you read for me what the three lines -- the
6 last three lines on the second page of Exhibit 230 say,
7 please?

8 THE DEPONENT: Last three lines?

9 Q Yes. It starts with "but," it looks like.

10 MR. MARKHAM: On page 2 or page 3?

11 Q I'm on page -- oh, I apologize, I'm on page 3.

12 A Okay. I'm sorry, I still don't know where you
13 are.

14 Q On the bottom of page 3, it says, "but if
15 something in school," do you see that?

16 A Under the end.

17 Q Yes.

18 A Yes. I said -- let's see, "but if something in
19 school was the cause, I'd expect it to persist the entire
20 day at school and it does not."

21 Q Why did you write that?

22 A Because this was my thinking of when you have
23 exposures over time that are causing a problem, usually,
24 it's something that if -- once it gets triggered, it often

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1 would last the whole day if the cause of it is still there
2 all day. So, his were, at this point in February, were
3 intermittent and they didn't last all day. He'd have them a
4 couple of hours, then it might go away, and when they
5 weren't so severe, they waxed and waned throughout the day.
6 This whole pattern changes within a few weeks of this
7 statement, but at this time, I said -- because, again, it's
8 about when someone reaches a threshold where the problem
9 becomes more consistent and more, you know, just more
10 regular, which he hadn't quite reached here yet. He does
11 later on.

12 Q Now, at that point in time, was it your
13 understanding that [REDACTED] was being exposed to WiFi
14 throughout the day at school?

15 A Yes.

16 Q But his symptoms were not persisting through the
17 entire day at school?

18 A No. His symptoms came and went and they came and
19 went at different times at school.

20 Q So in writing this, were you doubting whether or
21 not WiFi was the cause of [REDACTED]'s symptoms?

22 A I was just saying we have to keep watching it and
23 see what happens.

24 Q Can you turn for me to the last page of